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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by the American Association of Jurists, a non-governmental organization in special consultative status, and Centre Europe-Tiers Monde (CETIM), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 1999]

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* This written statement is issued, unedited, as received from the submitting non-governmental organizations.

The external debt of Southern countries

Centre Europe-Tiers Monde (CETIM) and the American Association of Jurists have repeatedly raised the issue of the effects of external debt on the exercise of the right to development and economic, social and cultural rights; we have also proposed a number of reforms and mechanisms for bringing us closer to a solution to this stubborn problem.

In general, we remain firmly convinced that:

- The perpetuation of the external debt of the less developed countries and countries with economies in transition is first and foremost a political decision;

- Any progress towards resolving the problem must involve cancellation of the debt;

- There will, however, be no lasting solution without a re-examination of the underlying mechanisms that control and perpetuate unequal development, the root cause of the failure to offer equal economic, social and cultural rights for all, or at the very least without the active pursuit of voluntary policies diametrically opposed to the so-called neo-liberal laissez-faire approach.

This being the case, we urge the Special Rapporteur on foreign debt to consider the two proposals below:

A. Release methodological tools enabling organizations in civil society to identify the origins of their countries' debt and track its various components, promote and disseminate them in order to encourage such organizations to take the initiative in investigations of this kind.

Such methodologies, intended particularly for research institutes, trade unions, and citizens' organizations, could draw on research already carried out in this field. We have in mind, for example, Pierre Galand and Michel Chossudovsky's study of Rwandan debt; the study of the Democratic Republic of the Congo commissioned by the Centre National de Coopération au Développement (CNCD-NCOS) and prepared by a group of Belgian NGOs; the work done in a number of countries as part of the Jubilee 2000 campaign; the parliamentary investigations in Venezuela; and research by Argentine economists and legal scholars.

These, together with methodological proposals, could be published on an Internet site.

Governments, central banks, and international financial institutions should be encouraged to facilitate such investigations in keeping with the universal officially proclaimed desire for "transparency".

Finally, the media should be urged to report the findings in order to mobilize public opinion in support of the requisite solutions, including a solution to the misappropriation of funds, based on in-depth and balanced information.

It is an acknowledged fact that part of what is owed has been diverted from its supposed use and invested in Northern countries such as Switzerland, the United States, France, Germany, Belgium and the United Kingdom, and in some cases has never left those countries!

Other portions of the debt, subsequently "nationalized", were originally purely private loans or were covered by highly dubious State or municipal guarantees. Some seem to be the result of completely bogus transactions. Investigations into such matters obviously require widespread popular mobilization, which alone has the power to compel genuine international cooperation in this area, in particular the waiver of bank secrecy provisions.[1]

B. Organize an in-depth (legal) debate on the legal principles governing the issue of external debt (respective responsibilities of the parties, supposed continuity of the State in all circumstances, etc)

"Objectionable debts", which have been criticized by a number of academics and organizations, throw into relief certain blatant injustices that are offensive to the most basic moral sense. The debts accumulated by the South African apartheid regime and the perpetrators of the Rwandan genocide are good examples. The same is true of debts contracted by dictatorships (with the full knowledge of their creditors, who cannot plead ignorance), which any democratic government should feel obliged to repudiate.

Hence the oft-cited principle of State continuity must be placed in proper perspective and weighed against respect for more fundamental values such as compensation for victims and the honouring of human rights.

More generally, apart from the fact that, altogether, the debtor countries have paid back more than they borrowed in the first place, the ordinary people whose pockets are tapped to repay the debts have often never seen the colour of the money, as stated above.

Furthermore, the international rules on debt collection are absurd. The system is apparently designed to ensure that, whatever the original obligations of creditors and debtors, the

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[1] It would be very convenient to restrict the field of inquiry to corruption and embezzlement among "rich Southerners in high places". Clearly, much of the debt is the result of concerted efforts by Northern industrialists and bankers fraudulently to create lucrative openings which have nothing to do with genuine development needs, plus the greed of certain corrupt Southern leaders. Contrary to appearances, however, it should not be forgotten that the primary responsibility lies with the ruling circles in the North who prompted this tragic accumulation of assets and have made every effort to perpetuate it through the financial institutions which they dominate (the International Monetary Fund, the World Bank, the London and Paris Clubs, the group of seven most industrialized countries, and the Organization for Economic Cooperation and Development (OECD)). By so doing they have literally taken the peoples of the South hostage in the sense that they are perpetually in debt and liable to indefinite servitude: thus the debt serves the North as a political lever for perpetuating its domination, oppression and exploitation. In their hands, this lever remains the chief instrument for ensuring that their policies are followed locally by their "friends" in the South and East, often in the most repressive fashion, when they themselves do not intervene more directly.

population as a whole, and especially the poorest sections of society, is ultimately liable and becomes hostage to the debt. The supposedly untouchable principles involved ultimately lead to blatant injustices and an effective denial of rights.

At the same time, in order to shed more light on this debate, an historical study of de facto and de jure cases of debt forgiveness is to be recommended. This would show without a shadow of doubt the variable geometry of the principles involved, which are chiefly determined by relative strengths, assessments and balances of interests, sometimes economic, sometimes – let us hope – prompted by a concern for justice. Some examples are the South American debts of the 1930s (Chile, Brazil, Peru, Colombia and Mexico all repudiated theirs), the actions of the newly-formed USSR vis-à-vis tsarist Russia, the repudiation by the lawful Government of Costa Rica of the debt contracted by the putschist General Tinoco in 1917 (a legal victory against the Royal Bank of Canada, whose case was dismissed on the grounds that it had lent money to an illegitimate government), and applications of the constitutional principles governing the recovery of debts contracted with the United States Treasury by states of the Union.

One final point. Informal reports say that Mr. Figueredo has stepped down as the Special Rapporteur on foreign debt or is preparing to do so. We emphatically request that his successor should be appointed as quickly as possible so that this report can be prepared with the conscientiousness, care and resolve that such a serious problem warrants. The mandate should not be allowed to suffer on account of a poor initial choice of Special Rapporteur.